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**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/161530

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 25, 2014, under Wis. Stat. §49.45(5), and Wis. Admin. Code §HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability (DHCAA) n/k/a the Office of the Inspector General (OIG) in regard to Medical Assistance (MA), a telephonic hearing was held on November 25, 2014, at Waukesha, Wisconsin. The record was held open 20 days post-hearing to allow petitioner time to submit new information to the OIG for review and comment.

The issue for determination is whether the OIG correctly modified petitioner's prior authorization (PA) request for physical therapy (PT).

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

I

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: written submittal of Mary Chucka, PT, DPT, MS  
Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

### **FINDINGS OF FACT**

1. Petitioner is a resident of Waukesha County.
2. Petitioner was 10 years old at the time (September 2, 2014) that her private PT provider (HealthReach) submitted a PA request (PA# [REDACTED]) for petitioner to receive private PT once weekly for 26 weeks starting September 14, 2014. Exhibit 1.
3. Petitioner lives at home with her family. She is diagnosed with Cerebral Palsy with diplegia, muscle weakness and abnormality of gait. See Exhibit 1. She had hamstring lengthening in September 2013.
4. Petitioner has an Individualized Education Plan (IEP) through the [REDACTED] District where she receives PT services.
5. On September 26, 2014 the OIG issued a notice to petitioner indicating that it was modifying the PA request to allow 1 session every other week for 26 weeks because it did not find the level of PT requested to be medically necessary.

### **DISCUSSION**

Physical therapy is covered by MA under Wis. Admin. Code, §DHS 107.16. Generally it is covered without need for prior authorization (PA) for 35 treatment days, per spell of illness. Wis. Admin. Code, §DHS 107.16(2)(b). After that, PA for additional treatment is necessary. If PA is requested, it is the provider's responsibility to justify the need for the service. Wis. Admin. Code, §DHS 107.02(3)(d)6. If the person receives therapy in school or from another private therapist, there must be documentation of why the additional therapy is needed and coordination between the therapists. Prior Authorization Guidelines, Physical, Occupational, and Speech Therapy, Topics 2781 and 2784.

In reviewing a PA request the OIG must consider the general PA criteria found at §DHS 107.02(3) and the definition of "medical necessity" found at §DHS 101.03(96m). §DHS 101.03(96m) defines medical necessity in the following pertinent provisions:

"Medically necessary" means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury, or disability; and
- (b) Meets the following standards:
  1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability; ...
  3. Is appropriate with regard to generally accepted standards of medical practice; ...
  6. Is not duplicative with respect to other services being provided to the recipient; ...
  8. ...[I]s cost effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
  9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

The OIG interprets the code provisions to mean that a person must continue to improve for therapy to continue, specifically to increase the ability to do activities of daily living. In addition, at some point the therapy program should be carried over to the home, without the need for professional intervention.

In this case the OIG modified the request because it could not determine from the information submitted by petitioner's provider that petitioner requires weekly private PT in addition to what she receives in school and what can be accomplished with a home program with once every other week visits with the

private PT. Specifically, the OIG noted that the provider has not offered objective measurements of her limitations so as to show the need for the weekly private PT. As stated by the OIG consultant in their summary, “if the member is at risk for any changes in her status that require weekly private PT sessions, the requesting provider has not offered the evidence of this – for example, objective measurements of all her limitations as reported at intervals that support change (either progress or regression) occurs so rapidly that only weekly services by the requesting provider may meet her needs.” See Exhibit 2.

The OIG understands that a therapist may assert that a skilled level of intervention is needed but this must be supported by clinical information. Therapy services are then considered required when the problems identified can be reasonably associated with the presenting concern and the proposed services are reasonably expected to resolve the deficits. A decision of the Division of Hearings and Appeals aptly states what is required of a provider in seeking an approvable PA Request:

An effective proposal for ... therapy must follow a several step process. It must first determine the nature of the recipient’s disability and the limitations that that disability imposes upon him. Second, it must set goals to help the recipient live with the disability. Third, it must develop a treatment plan that has a realistic chance of accomplishing the goals. Finally, to determine whether the therapy meets these criteria, the provider must perform tests that consistently and accurately measure performance. If the therapy does not meet these criteria, it fails the medically necessary test because it is not consistent with the recipient’s symptoms or with treatment of the recipient’s disability.

See, DHA Case NO. MPA-55/53461 (Wis. Div. Hearings Appeals July 29, 2001)(DHFS), at pp. 2-3.

Based on the evidence presented by the petitioner, it appears that she has some strength and endurance deficits. The provider has not shown that those deficits could not be met by the PT in school and a home program adjusted every other week by the private PT. The measurements are not stated objectively in some cases and where they are stated, they do not show any significant changes so as to show a requirement for the requested weekly sessions by a skilled therapist. Petitioner’s mother has offered suggestions for why the measured deficits did not change (growth spurt or lack of once weekly private PT sessions) but with all due respect, that proof needs to be provided by the provider to substantiate the request. Further, the private PT may well indeed be qualified to assess a client by using the terms “decreased”, “impaired” or “inappropriate”, however, when requesting PA, the provider is required to measure deficits objectively so that a baseline of a client’s functional limitations are identified, a plan of care can be derived, and progress, if any, can be shown to authorize the therapy. The Prior Authorization/Therapy Attachment (PA/TA) Completion Instructions recite this requirement several times. See PA/TA Completion Instructions, available online at <https://www.dhs.wisconsin.gov/forms/fl1008a.pdf>. I note that the Instructions specifically state in Section VI the requirement for using specific, measurable, and objective terms and terms that are not considered as such, along with examples that are.

I have reviewed the petitioner’s evidence carefully and in detail. I can only conclude that the OIG’s modification of the requested PT regimen was correct. The provider did not adequately document the medical need for the requested PT. The petitioner may file a new PA Request at any time in the future, and submit new clinical documentation designed to establish these clinical facts and observations for the OIG to then review.

### **CONCLUSIONS OF LAW**

The OIG correctly modified petitioner’s PA request for PT.

**THEREFORE, it is**

**ORDERED**

That the petition for review herein be and the same is hereby dismissed.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

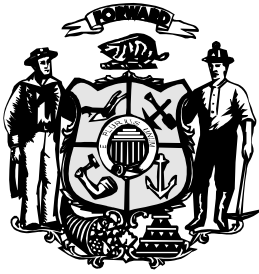
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 28th day of January, 2015

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\sKelly Cochrane  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on January 28, 2015.

Division of Health Care Access and Accountability